

## MINUTES OF THE REGULAR MEETING OF JUNE 23, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 23, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. I.G. Burton, Mr. Marty Ross, and Mr. Doug Hudson, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mr. Daniel Brandewie – Planner.

Mr. Lank advised the Commission that in reference to the Agenda the Old Business item “Coastal Club” has been removed at the request of the Developer and may be placed on a future agenda, and that the Additional Business reminder item “Reorganization” has been removed and will be placed on the Agenda for the next meeting.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to approve the Revised Agenda as amended. Motion carried 5 – 0.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to approve the Minutes of June 9, 2016 as circulated. Motion carried 5 – 0.

## OLD BUSINESS

### **C/Z #1759 – Osprey Point D, LLC**

**Application of Osprey Point D, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 126.8795 acres, more or less, land lying west of Old Landing Road (Road 274) 1.2 mile south of Warrington Road (Road 275) (911 Address: 20836 Old Landing Road, Rehoboth Beach, DE) (Tax Map I.D. #334-18.00-83.00).**

The Commission discussed this application which has been deferred since January 8, 2015.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1759 for Osprey Point D, LLC for a change in zone from AR-1 Agricultural Residential to MR-RPC Medium Density Residential – Residential Planned Community based upon the information contained in the record and for the following reasons:

- 1) This project originally sought approval for 339 units, including 180 townhouses. During the public hearing, much of the opposition related to the density of the proposed development and the proposed townhouses. After hearing these concerns, the applicant submitted a revised Site Plan that deletes the townhouses and reduces the number of units to 217, which is a reduction in the density from 3.2 units per acre to 2.0 units per acre; or gross density calculation from 2.7 units per acre to 1.7 units per acre. This 36% reduction

in housing units results in a development that is consistent with the surrounding developments of Old Landing Road. In my 11.5 years on the Commission typically changes are made from Preliminary to Final approval.

- 2) The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development Area as established by the Comprehensive Land Use Plan.
- 3) The development of this site at 217 units is consistent with and often less than the densities of surrounding RPCs and other developments that exist along Old Landing Road, including Sawgrass South, Sawgrass at White Oak Creek and the Villages at Old Landing. In addition, Redden Ridge was approved as a bonus density cluster development. As a result, this project represents “infill” development.
- 4) Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project.
- 5) Central water will be provided to the project.
- 6) With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity. This development, revised to only include single family lots, achieves this goal. The design also retains a great deal of open space, provides for additional buffers, protects wetlands, and provides considerable recreational amenities.
- 7) A revised Traffic Operational Analysis was prepared and reviewed by DelDOT as a result of the reduction in residential units. The applicant will be required to comply with all DelDOT entrance, intersection and roadway improvement requirements, including the improvement of Old Landing Road from Fairway Drive to its southern terminus, construction of bicycle and pedestrian improvements and required contributions to the signalization and improvement of the Old Landing Road/Warrington Road/Strawberry Way intersection.
- 8) The proposed development will provide buffers from Federal and State wetlands and will comply with the Inland Bays Pollution Control Strategy. The Final Site Plan will take into account the review and approval of Federal, State and County agencies that have jurisdiction over the protection of wetlands.
- 9) There was concern stated in the record about soil types and storm water management at this site. All of this will be reviewed and regulated by the Sussex Conservation District and DNREC prior to Final Site Plan approval. As with any Preliminary Site Plan, there may be further changes to the Plan following the District’s and DNREC’s review to accommodate an appropriate and workable storm water management design.
- 10) The Plan has adequately addressed all of the terms contained in Section 99-9C of the Subdivision Code.
- 11) This recommendation is subject to the following conditions:
  - A. The maximum number of residential units shall not exceed 217 single family lots. No townhouses shall be permitted in the project.
  - B. Site Plan review shall be required for each phase of development.
  - C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s requirements, or in accordance with any further modifications required by DelDOT. The developer shall also contribute to the Old

Landing Road/Warrington Road/Strawberry Way intersection and signalization improvements.

- D. As proffered by the applicant, the central recreational facilities and amenities shall be constructed and open to use by residents of the development no later than the issuance of the 100<sup>th</sup> building permit. These recreational facilities shall include a clubhouse, pool, tennis and basketball courts, and a tot lot and dog park.
- E. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
- F. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the applicant, street design shall include sidewalks on both sides of the streets and street lighting.
- I. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
- K. The applicant shall cause to be formed a homeowner's association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. The wetland areas shall be clearly marked on the site with permanent markers.
- M. As proffered by the applicant, there shall be a 25 foot non-disturbance buffer from all Federal non-tidal wetlands. There shall also be a 50 foot non-disturbance buffer from all State tidal wetlands as required by County Code.
- N. A revised Preliminary Site Plan depicting these conditions and the applicant's proposed changes shall be submitted to the Department for the review and approval by the Planning and Zoning Commission.
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this C/Z #1759 for Osprey Point D, LLC to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 3 – 0. Mr. Ross did not participate in the vote since he was not present for the public hearing. Mr. Hudson did not participate in the vote since he was not a Commissioner at the time of the public hearing.

**C/U #2049 – Blue Claw, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a boat storage facility located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.5052 acres, more or less.** The property is located southeast of Downs Landing Road (Road 313A) 235 feet southwest of River Road (Road 312). (911 Address: 30842 Downs Landing Road, Millsboro). Tax Map I.D. 234-34.00-298.01 & 292.00.

The Commission discussed this application which has been deferred since May 26, 2016.

Mr. Ross stated that he would recommend that the Commission recommend a denial of Conditional Use No. 2049 for Blue Claw, LLC for a boat storage facility based on the record made during the public hearing and for the following reasons:

- 1) The area is residential in character, which is not consistent with the use as a boat storage facility. While the location is near the water and marinas, there are other locations within the general vicinity that could be more appropriate and which will not have such an impact on the existing homes that surround this property.
- 2) The applicant acknowledges that the boat storage area needs to be secured, and has proposed a 6 foot high chain link fence topped with barbed wire. This industrial type of fencing is also inconsistent with the surrounding single family neighborhood and is inappropriate for this location.
- 3) The Gull Point Homeowners Association, which governs the development next door to the proposed storage site, has opposed the application.
- 4) There are no other approved business or commercial uses in the immediate vicinity of the proposed use.
- 5) There is not adequate access to the proposed facility from the adjacent and narrow State right-of-way. In this case, the applicant has stated that the boat storage area would be accessed through the front of the property, where a rental dwelling owned by the applicant is also located. This is not an appropriate entrance for regular vehicle and boat traffic, especially when the storage area can be accessed from dawn to dusk by anyone with a boat there.
- 6) Unlike some other small business and storage sites that have been permitted in the past, this property will not be occupied by the applicant. So, there would only be limited control over how it is used, how it is accessed, or how it is maintained. These circumstances also make it inconsistent with its location surrounded by residential homes and the Gull Point development.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to forward C/U #2049 for Blue Claw, LLC to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

**C/U #2051 – Dale Thaxton**

**An Ordinance to grant a Conditional Use of land in a GR (General Residential District) for a computer repair business located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.236 acres, more or less.** The property is located east of Camp Arrowhead Road (Road 279) southwest of Cypress Drive 125 feet northwest of

Maple Lane and being Lot 50, Angola Neck Park Subdivision. (911 Address: 22874 Cypress Drive, Lewes). Tax Map I.D. 234-12.14-54.00.

The Commission discussed this application which has been deferred since June 9, 2016.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

## PUBLIC HEARINGS

### **2016-9 – Beverly S. Hudson**

This is a major subdivision plan. The plan proposes to subdivide 43.5 acres +/- to create 3 lots off a private road. The property is located on the south side of Piney Neck Road (Road 336) approximately 0.68 mile east of Hudson Road. The property is zoned AR-1 (Agricultural Residential District). Tax Map I.D. 233-6.00-130.00. Waiver request for elimination of landscape buffer and from the street design standard.

Ms. Cornwell advised the Commission that this was a major subdivision for the creation of two new lots and includes the waiver for the elimination of landscape buffer and from the street design standard and that the staff is in receipt of a soil feasibility study.

The Commission found that Steven Sellers, Professional Land Surveyor with Karins and Associates and Beverly Hudson were present on behalf of the application; that DelDOT approval has been obtained and they are awaiting approval from the Fire Marshal and Sussex Conservation District and that the area is wooded.

The Commission found that there was no public in support or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Hudson stated that he would recommend that the Commission approve the Major Subdivision 2016-9 Land of Beverly S. Hudson based on the record made during the public hearing and for the following reasons:

- 1) This subdivision is in accordance with the requirements of the Sussex County Subdivision Code. The lots are large and therefore exceed the  $\frac{3}{4}$  acre minimum lot size for a subdivision in the AR-1 Zone.
- 2) The subdivision complies with the requirements of Section 99-9C of the county Subdivision Code.
- 3) The lots are consistent with other properties in the area.
- 4) DNREC has granted septic approval for the lots.
- 5) Because this is a three-lot subdivision with lots exceeding 2 acres in size and because the lots are completely wooded, waivers of the landscape buffer and street design standards are appropriate.
- 6) This is preliminary approval. Final Site Plan approval may be granted by staff upon receipt of all agency approvals.

Motion by Mr. Hudson, seconded by Mr. Ross, and carried unanimously to grant preliminary approval for the Major Subdivision. Motion carried 5 –0.

**C/Z #1801 – Long Neck Road, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Indian River Hundred, Sussex County containing 0.689 acre, more or less.** The property is located north of Long Neck Road (Route 22), 1,850 feet east of Banks Road (Road 298). (911 Address: 32549 Long Neck Road, Millsboro) Tax Map I.D. 234-23.00-307.02.

Mr. Lank advised the Commission that the applicant provided surveys of the property with his application, filed on March 31, 2016, and provided an Exhibit Booklet on June 15, 2016. The Exhibit Booklet contains a copy of the application form, a copy of the deed to the property, a boundary survey, site photographs, a DelDOT concept plan, a DelDOT letter and Support Facilities Report, and suggested proposed Findings of Fact.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated June 21, 2016, referencing that development of the site will require the developer to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that no storm flood hazard areas are affected; and that no tax ditches are affected.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, received June 20, 2016, referencing that the site is located in the Long Neck Sanitary Sewer District; that the parcel has been provided with a 6-inch sanitary sewer lateral and the existing home was connected to sewer on November 6, 2002; that a lateral upgrade could be required, depending on the proposed use; that conformity to the North Coastal Area Planning Study will be required; that the commercial use of the parcel is not expected to have an adverse impact on the sewer system; and that a concept plan is required.

The Commission found that Chris Little of Long Neck Road, LLC was present with Dennis Schrader, Esquire of Morris James Wilson Halbrook & Bayard, LLP, and that the stated in their presentation and in response to questions raised by the Commission that the Exhibit Booklet provided contains a copy of the application form, the deed to the property, the survey of the property, road side Google photographs, a site plan, DelDOT comments in the form of a letter and Support Facilities Report, and suggested proposed Findings of Fact; that the majority of the parcels in the immediate area are used for business or commercial purposes; that the site is located in the Environmentally Sensitive Developing District Overlay Zone; that there are no wetlands on the property; that the lot is improved with a modular home and accessory buildings; that the site is in close proximity to stores, shops, restaurants, boat storage facilities, a dog kennel service and other business/commercial uses; that the area is heavy commercial in activities; that the applicant may establish an office on the property as depicted on the proposed site plan; that security lighting may be installed; that central sewer is available; that the rezoning is an infill

parcel surrounded by other business and commercial zonings; that they have offered proposed Findings of Fact for consideration; and that the use should not impact traffic.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1801 for Long Neck Road, LLC for a rezoning from AR-1 Agricultural Residential to CR-1 Commercial Residential based on the record made during the public hearing and for the following reasons:

- 1) The property is located in a Developing Area according to the Sussex County Land Use Plan. This area is appropriate for commercial zoning under the Plan.
- 2) The properties in the immediate vicinity include other commercial and business uses, including restaurants, dog kennels, and storage units.
- 3) This rezoning is consistent with these existing uses. This location, along Long Neck Road, is appropriate for commercial development and commercial zoning.
- 4) The rezoning will not have an adverse impact on neighboring properties or roadways.
- 5) The property will be served by central sewer provided by Sussex County. Sewer is a part of the Long Neck Sanitary Sewer District.
- 6) No parties appeared in opposition to the application.

Motion by Mr. Johnson, seconded by Mr. Hudson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

## OTHER BUSINESS

### **Deerbrook 2008-16 Final Subdivision Plan**

Ms. Cornwell advised the Commission that this is a final subdivision plan for the Deerbrook single family subdivision located at the end of Autumn Road west of John J. Williams Highway (Rt. 24). The property will contain 120 lots and is zoned GR (General Residential District) with a 10,000 SF minimum lot size. It will be served with central water and sewer services. Sidewalks are planned on both sides of the street and recreational amenities are required. The Planning Commission granted preliminary subdivision approval on August 18, 2010 with conditions. There are no significant changes from the preliminary plan and complies with the requirements of approval. Staff is in receipt of all agency approvals. This Plan shall expire on July 1, 2016 unless the record plan has been recorded.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

**Rt. 54 Veterinary Clinic (CU 2023)  
Preliminary Site Plan**

Ms. Cornwell advised the Commission that this is a preliminary site plan for the establishment of a veterinary clinic. The property is zoned AR-1 (Agricultural Residential District). The tax parcel is 533-18.00-12.00. The property is located on the north side of Lighthouse Rd. west of Dickerson Rd. The use as a veterinary clinic requires a Conditional Use. The Planning Commission recommended approval of the Conditional Use on July 30, 2015. The County Council approved the Conditional Use at their meeting of September 15, 2015. The plan complies with the conditions of approval and the Zoning Code. Staff is in receipt of all agency approvals.

Motion by Mr. Hudson, seconded by Mr. Ross, and carried unanimously to approve the preliminary site plan and the final site plan. Motion carried 5-0.

**Coastal Club – Land Bay 2  
Preliminary Site Plan**

Ms. Cornwell advised the Commission that this is a preliminary site plan for the creation of 82 duplex units within the Coastal Club development. The property is zoned MR-RPC (Medium Density Residential District, Residential Planned Community). The property is located on the south side of Beaver Dam Rd. The 82 duplex units is in compliance with the conditions of approval of the plan. The site complies with the Zoning Code. The plan will provide sidewalks and street lights within the development. The final site plan will come back before the Planning Commission as it is part of a RPC once all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant preliminary site plan approval with final site plan approval to the Planning Commission. Motion carried 5-0.

**The Reserves  
Preliminary Site Plan**

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction for an underground propane tank field for the development. The property is located southwest of Woodland Ave. The property is zoned MR-RPC (Medium Density Residential District, Residential Planned Community). The tax parcel is 134-12.0-468.13 (portion of). As it is part of a RPC the underground propane storage tank field requires review by the Planning Commission. The location of the underground propane tank field will be within a portion of the open space. The area will be fenced and there will be landscaping around the area. The plan complies with the Zoning Code. Staff is in receipt of all agency approvals.

Motion by Mr. Hudson, seconded by Mr. Ross, and carried unanimously to grant approval of the preliminary site plan and final site plan. Motion carried 5-0.



**Lands of Norwood on Mount Joy Rd.  
Minor Subdivision with 50 ft. easement**

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of two (2) parcels with a residual and the expansion of the existing 50 ft. easement. Two of the parcels will have access off of the 50 ft. easement and the residual will have access off of Mount Joy Rd. Tract one will be 6.47 ac. Tract two will be 7.48 ac. Tract two will have land across the easement. The easement will go over an existing driveway. The residual will be 13.61 acres. The property is zoned AR-1 (Agricultural Residential District). The tax parcel is 234-29.00-29.00. The property is located on the west side of Mount Joy Rd. north of John J. Williams Hwy. Staff notes that the property line between tract two and the residual will need to be relocated to accommodate the setback for the cell tower. Staff is awaiting approval from DelDOT.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the minor subdivision with final approval subject to staff upon receipt of DelDOT approval and the line being adjusted to comply with the setback for the existing cell tower. Motion carried 5-0.

**Lands of Marvil on Camp Rd.  
Minor Subdivision with 50 ft. easement.**

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of two (2) parcels with a residual and the creation of 50 ft. easement. Lot 1 will be 5 ac. Lot 2 will be 10.875 ac. The residual will be 20.739 ac. Lots 1 and 2 will have frontage along the proposed 50 ft. easement. The easement will go over an existing driveway. The property is zoned AR-1 (Agricultural Residential District). The tax parcel is 232-6.00-42.01. The property is located off of Camp Rd. and Discount Land Rd. Staff is awaiting approval from DelDOT.

Motion by Mr. Ross, and seconded by Mr. Burton, and carried unanimously to approve the minor subdivision with final approval subject to staff upon receipt of DelDOT approval. Motion carried 5-0.

**ADDITIONAL BUSINESS**

**Discussion regarding the Comprehensive Land Use Plan**

An update of the progress of the Comprehensive Plan was provided by Alexis Williams and John Mullen of McCormick Taylor. There was discussion regarding the Focus Group Meetings and the Planning Commission will allow for public comment at the end of Planning Commission meetings.

**Reorganization**

This Item was removed with the adoption of the Agenda and will be placed on the Agenda for the first meeting in July.

Mr. Johnson announced his resignation as a Planning and Zoning Commissioner, effective September 1, 2016, and thanked the other Commissioners, staff, the Sussex County Council, and the citizens of Sussex County for their support in his 11.5 years as a Commissioner.

Meeting adjourned at 7:35 p.m.